

HONORABLE LONNY R. SUKO

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 WILD FISH CONSERVANCY,)
11) No. CV-05-181-LRS
12 Plaintiff,)
13 v.)
14) STIPULATION AND
15 official capacity as Secretary of the) ORDER SETTLING
16 Interior; U.S. FISH & WILDLIFE) PLAINTIFF'S REQUEST FOR
17 SERVICE; H. DALE HALL, in his) ATTORNEYS' FEES AND COSTS
18 official capacity as the Director of)
19 the U.S. FISH & WILDLIFE)
20 SERVICE; JULIE COLLINS, in her)
21 official capacity of the Leavenworth)
22 National Fish Hatchery Complex,)
23 Defendants.)
24)
25)
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27)
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29)

21 WHEREAS, in this matter Plaintiff Wild Fish Conservancy challenges the
22 Fish and Wildlife Service's compliance with the Endangered Species Act in
23 connection with its operations of the Leavenworth Fish Hatchery ("Hatchery"), and
24 also challenges the Fish and Wildlife Service's August 31, 2006 biological opinion
25 issued to evaluate the effects of the Hatchery on a bull trout, a species protected
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1 under the Endangered Species Act.

2 WHEREAS, on September 7, 2007, Plaintiff moved for partial summary
3 judgment on its claim that the 2006 biological opinion issued on the operations of
4 the Hatchery violated the Endangered Species Act and Administrative Procedures
5 Act.

6 WHEREAS, on October 19, 2007, Defendants moved for a voluntary
7 remand and for a stay of all proceedings, including Plaintiff's motion for partial
8 summary judgment.

9 WHEREAS, on November 19, 2007, the Court granted Defendants' motion
10 and remanded the August 31, 2006 biological opinion to the Fish and Wildlife
11 Service for further consideration.

12 WHEREAS, Plaintiff has submitted a claim pursuant to Section 11(g) of the
13 Endangered Species Act, 16 U.S.C. § 1540(g), for costs and fees incurred in
14 litigating its challenge to the August 31, 2006 biological opinion issued on the
15 operations of the Hatchery.

16 WHEREAS, the parties agree that it is in the interest of the parties and
17 judicial economy to settle Plaintiff's claim for attorney fees and costs in this action
18 without protracted litigation; and

19 WHEREAS, the parties enter this Stipulation without any admission of fact
20 or law, or waiver of any claims or defenses, factual or legal;
21 STIPULATION AND ORDER SETTLING
22 PLAINTIFF'S REQUEST FOR ATTORNEYS'
23 FEES AND COSTS - 2

1 NOW, THEREFORE, the parties hereby Stipulate and Agree as follows:

2 1. Defendants agree to settle Plaintiff's claim for attorneys' fees and costs in
3 the captioned litigation for a total of \$45,000.00. Payment by check will be made
4 payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, WA
5 98112, attn: Knoll Lowney.

6 2. Defendants agree to submit all necessary paperwork to the Department of
7 the Treasury's Judgment Fund Office pursuant to 16 U.S.C. § 1540(g)(4) within ten
8 (10) business days of receipt of the signed court order approving this Stipulation.

9 3. Plaintiff agrees to accept the payment referenced in Paragraph 1 in full
10 satisfaction of any and all claims for litigation costs to which Plaintiff is entitled
11 for challenging the August 31, 2006 biological opinion, up through and including
12 November 26, 2007, and agrees that receipt of this payment from Defendants shall
13 operate as a release of their claim for all fees incurred in connection with Plaintiff's
14 challenge of the August 31, 2006 biological opinion on the Hatchery up through
15 and including November 26, 2007.

16 4. By this Stipulation, Defendants do not waive any right to contest fees
17 claimed by Plaintiff or Plaintiff's counsel, including the hourly rate, in any future
18 litigation. Further, this Stipulation as to attorneys' fees and costs has no
19 precedential value and shall not be used as evidence in any other attorney fees
20 litigation.

21 STIPULATION AND ORDER SETTLING
22 PLAINTIFF'S REQUEST FOR ATTORNEYS'
23 FEES AND COSTS - 3

1 5. All parties whose signature lines appear in this document have consented
2 to its electronic filing.

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4 It is so stipulated.

5 SMITH & LOWNEY, PLLC

6 Dated: Sept. 24, 2008

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8 *s/ Brian A. Knutsen*
9 Richard A. Smith, WSBA # 21788
10 Brian A. Knutsen, WSBA # 38806
11 Attorneys for Plaintiff
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14 Email: rasmithwa@igc.org; briank@igc.org

15 Dated: Sept. 24, 2008

16 RONALD J. TENPAS
17 Assistant Attorney General
18 United States Department of Justice
19 Environment and Natural Resources
20 Division

21 JEAN E. WILLIAMS, Chief
22 LISA L. RUSSELL, Assistant Chief

23 *s/ J. Brett Grosko*
24 Trial Attorney (Md. Bar)
25 United States Department of Justice
26 Environment and Natural Resources
27 Division
28 Wildlife and Marine Resources Section
29 Ben Franklin Station, P.O. Box 7369
 Washington, D.C. 20044-7369
 Tel: (202) 305-0342; Fax: (202) 305-0275

 Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED. The parties'
2 joint motion for entry of stipulation and order, Ct. Rec. 125, is GRANTED.
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5 DATED: 9/29/08

6 s/Lonny R. Sukko

7 LONNY R. SUKO

8 UNITED STATES DISTRICT JUDGE